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THE LEGAL PROFESSION IN ENGLAND AND AMERICA.

We have incidentally alluded to the main topic of this paper before, but not so much in detail as its importance deserves.

It is generally known in America, that the profession in England keep up a distinction between attorneys and solicitors on the one hand, and counsellors or barristers on the other, which is not regarded in this country. But we apprehend the extent of this distinction, and how it operates, is not generally appreciated, if indeed it be at all generally understood here. It is not that they do not meet and interchange views, for that they must of necessity constantly do. But they are as entirely distinct as it is possible for any two classes of men to be who are employed in carrying forward the same enterprises, and are constantly in immediate juxtaposition.

Whether this distinctness and entire separation between these two orders of the same profession is wise or not, or how far it might be modified, with the mutual advantage of both classes, we do not purpose now to consider. There has been, and is being now in England, a good deal said, and something done in regard to this question of separation, or consolidation, or modification of this relation. And we may allude to it again in that relation. But for the present we desire to point out how the matter stands there.

In the first place, then, the attorneys and solicitors in England,

and equally in Scotland and Ireland, are not members of the bar at all. They are not allowed to sit within the bar, unless it be as matter of indulgence or courtesy, while instructing or consulting one of the barristers; and then they are generally expected to stand as men stand in the presence of princes, or of marked superiors in age or position. We do not mean that if a solicitor has occasion to hold a very long consultation with the counsel or barrister at the bar, which practically seldom occurs, and out of weariness or forgetfulness he should sink down upon the nearest bench within the bar, or lean against it, he would be admonished by the barrister to stand up, although that may possibly sometimes occur. But generally, we suppose, this or any similar departure from that etiquette would be attributed to some infirmity, either of body or mind, more commonly the latter, perhaps, as where we see one drumming on his hat, or the table, we attribute it to want of culture, or absent-mindedness, or both, sometimes.

There is no place within the bar where the solicitors (for that is now the universal term by which that grade of the profession is called), can sit. And for convenience, in order to be always ready to give instructions to counsel during the trial of causes, the solicitors sit upon a long bench, in front of the clerk's desk, facing the barristers. And as the barristers engaged in the conduct of the cause sit as far forward as they can, the solicitors come very nearly in communication with the front row of the bar, upon which the queen's counsel, who alone act as senior counsel, uniformly sit; and those engaged in the particular trial sit on the very front row. The junior counsel are always taken from those barristers who have not yet been promoted to the order of queen's counsel, and thereby permitted to wear silk gowns. Before this promotion they only wear what are called "stuff gowns," made of some smooth black stuff, delaine or worsted. The two front rows in the bar are usually appropriated to queen's counsel, and the more numerous class of those who have not attained to that degree occupy the rows further back, all the rows rising one above another, so as to enable those upon each seat to address the court over the heads of those on the forward rows, when all are standing. Nothing can be conceived more uncouth or inconvenient than the entire arrangement of an English court-room. In Paris it is entirely different. There the Palace of Justice is one of the

most venerable, roomy, comfortable, and at the same time august of all the public buildings of that elegant metropolis. And the court-rooms in the Palace of Justice are broad and high, and roomy, like our American court-rooms, except that there most of the space is appropriated to the convenience of the judges, while in England, as here also, the judges' quarters are very narrow, and those of the bar more ample.

The difference of the social position of the two classes of the profession in England is world-wide apart. That of the barrister is esteemed among the first class of the gentle and well-bred in the kingdom, coming next to the nobility and gentry itself. All the high judicial offices of the realm, and its dependencies, come exclusively from the higher order of the profession. No judicial appointments, as a rule, are made from the solicitors. Indeed, none can be so made. Many very eminent judicial officers have from time to time begun life as solicitors, but they have become barristers long before they were made judges, and this by keeping their full terms in one of the Inns of Court or Law Colleges, the only avenue to the higher grade in the profession. Lord HARDWICKE was originally a solicitor. And the same is true of Chief Justice WILDE, of the Common Pleas, afterwards Lord Chancellor, TRURO, a very eminent judge, and we believe the present Mr. Justice HANNEN, of the Queen's Bench, was at one time a solicitor, and that he was called to the bench before he had taken his silk gown.[1] And there are many other similar exceptional cases. But the rule is otherwise.

The distinction between senior and junior counsel, not only in position but in work, is maintained with great strictness, and it might almost be said, severity. A barrister "in stuff," who settles the pleading, and does much of the manual labor in preparing a cause for hearing, the moment he "takes silk," as it is

[1] Mr. Jeaffreson, in his Book about Lawyers, gives a long list of distinguished members of the bar, who began as solicitors; among whom he enumerates Sir WILLIAM GRANT, Master of the Rolls, and one of the most eminent of all the long line of English equity judges; Lord MANSFIELD, the most original and self-reliant of all the distinguished common-law judges; Lord THURLOW, for many years Lord High Chancellor, and whose ability and independence gained him respect, in spite of his sometimes coarse wit and constant profanity; and Sir SAMUEL ROMILLY, one of the most commanding advocates of the equity bar and the father of the present Lord ROMILLY, Master of the Rolls, and a law lord for hearing appeals in the House of Lords, although but seldom sitting in that capacity.

called, ceases from all such work, even in the causes in which he is already engaged, and other counsel must be employed and instructed before the case can proceed, if the delay costs the loss of a trial at the time appointed. At least this is the rule. There may be, now and then, an exceptional case, growing out of the exceptional character of the man; for in England, as everywhere, there will be some exceptional characters who will insist upon doing their own work in their own way in spite of all the canons of custom, or the horrors of those who will regard them as little less than barbarian, because they presume thus to transgress the rules of etiquette.

But no solicitor is ever, under any pretence whatever, permitted to intrude himself into any office or function of the barrister, either senior or junior. He may know more law, and be better able to present the case understandingly to court or jury than all the barristers in London or Middlesex; and that is sometimes true in a particular case; but he cannot be allowed to say one word to the court or jury, or to ask one question of any witness under any pretence whatever. One would just as soon expect him to come into court in *puris naturalibus*, or to utter the direst profanity in the presence of the judges. The thing is not even to be dreamed of. If one happens to have a complicated cause, or a stupid barrister to conduct it, which is not an exceptional case anywhere, he must be content to let his solicitor, perhaps a brilliant man and an elegant speaker, distil his, the lieutenant's, ideas through the cranium of his forlorn senior counsel, who is the only man whom etiquette will allow the court and jury to listen to, in the first instance, the other barristers following him in the order of seniority, but the solicitors never, under any circumstances.

There is another rule, too, which looks very queer to an American lawyer. The most condescending and courteous barrister will not, on any account, allow himself to communicate with his client, face to face. That must be done, and can only be done through the solicitor. The client may himself understand the case better than any barrister, both the law and the fact. He may have a cause of great complication and difficulty. He may sometimes feel that his solicitor is not fortunate either in his comprehension, or his mode of communicating with counsel, and that he fails to give the fullest force of the cause, or some

particular points of it, to the counsel. No matter, his mouth is sealed. He must commit an inexcusable discourtesy, or lose his cause, and lose it any way he will, if he presumes to violate the cast-iron etiquette and consistency of the English bar. His counsel would throw up his brief in the midst of the trial if his client should presume to speak to him in court, or indeed out of court, in regard to the cause. It is a thing not to be endured, and no man ever thinks of it any more than the culprit, in the dock under sentence of death, thinks of redeeming his lost position by an assault upon the judge! The thing is simply impossible. It is not only *fiat justitia cœlum ruat*, but let justice come in its own way, or the sky *will* fall!

Now all this sounds very ludicrous to an American; more so, if possible, than our practice does to an English barrister. An English barrister in full practice cannot well comprehend how this is endured by American counsellors, for whom he cannot help entertaining a sort of half-and-half respect, after seeing them, day after day, and finding that they sometimes understand the rules of the English law quite as familiarly as himself, whom he cannot help respecting, we say, if he would; but there is certainly no want of courtesy among the English bar towards their brethren in America, as many of us have had the very best reason to know and to feel. But still, with every disposition to put himself in our places, he cannot comprehend how such a man who seems just as courtly and polished and learned as himself, can possibly ever condescend to be dogged by, it may be, a rather rough and disagreeable client for months and years, not only at his office and in office hours, but at his dwelling also; and at all hours and in all places; at home and abroad; in the railway carriage and by the wayside, and by letters innumerable; on all days, *fasti et nefasti;* before church and after church; at baptisms, and fasts, and festivals; not giving him time to eat or sleep in quiet, and ready, as the good patriarch said in his extremity, "to swallow down his spittle" before he dies. We do not blame our English brethren for escaping, if they can, this awful ordeal. It is too sad a truth to be lightly spoken of; but it is the life of an American lawyer in full practice, and it ought not to surprise any one that the profession in other countries cannot comprehend why we submit to it. But we do, nevertheless.

It is a necessity which grows out of our perfect social equality among all grades and denominations of men. We doubt if the same degree of separation between the solicitor and counsel, or between client and counsel, exists anywhere else, as in England. We are sure this separation is much less rigidly enforced in Scotland than in England. In Edinburgh the members of the bar commonly have their offices at their dwellings, and there meet the solicitors and their clients; and in France there seems to be no reluctance among the most eminent avocats to meet both clients and the subordinate members of the profession, whether avocats or avoués, as the solicitors are there called.

We are not surprised at the recent movement in England to provide a more liberal basis for the intercourse of the different grades of the profession. We have watched the movement with sincere interest; not because we have any hope that it could teach any lesson which it would be possible for us to profit by. This is one of the subjects to which the maxim *nulla vestigia retrorsum* applies with invincible force. It would no more be possible for the American bar to adopt and enforce any rules of etiquette among themselves except those of the most general and unmeaning character, than it would to restore the wig and gown, which are certainly not without their significance and value in the English bar. There is something about this matter of ceremonial, in America, which seems puzzling, when attempted to be viewed upon any basis of reason or consistency; or, to speak more artistically in the affected terminology of the schools, when psychologically considered. There is no country in the world, probably, so fond of all manner of ceremonial, pertaining to dining-room and drawing-room manners. And the same is true of all social fêtes, weddings included. The Americans seem willingly to make themselves a world-wide laughing stock, in all these matters, by their very excesses. But the moment you touch any such matter, or official dress or ceremony, unless it be in the army or navy, there seems to spring up a kind of competitive rage, to absolutely run the thing into the ground; as if they could never rest satisfied with the work of demolition. The movement in Congress to dispense with all diplomatic costume, by our representatives abroad, was a striking instance of infatuation in this way, which no foreigner ever will or can comprehend; except as an appeal to the popular prejudice, in our own country, against

official ceremonial. That our ministers should be in advance of all others in dress and ceremonial everywhere else but at court, and positively barbarous there, is not easy of explanation, except upon the basis of an appeal to popular prejudice; and in that view it is scarcely respectful to the courts where we claim recognition, since commonly we expect the head of a household to set the pattern of ceremonial in his own house, and others to follow; and this furor in regard to diplomatic costume seems to be nothing less than an attempt to control such matters, both at home and abroad.

We have read Mr. Jevons's letter, upon which the movement in England, just referred to, rests, or to which it is primarily referable, mainly, if not exclusively; and we must confess that it strikes us as eminently reasonable, just, and moderate. We cannot comprehend why it may not be adopted. But we know that such changes come about very slowly among long-established institutions in an old and stable order of things. We believe the order of solicitors dates no further back than the days of the Star Chamber; and that at first they had no very well defined office more than some members of the profession have among us, who assume to undertake what others will not or cannot accomplish. We hope we may be pardoned for an allusion to Mr. Jevons, which is mainly of a personal character. He is one of the leading solicitors in Liverpool; a gentleman of high culture and learning, both in his profession and elsewhere. We met no member of the profession in England, either within or without the bar, who seemed to us more calculated to do honor to himself and valuable service to his clients, in any department of practice, than Mr. Jevons. He seemed to us a gentleman whom no terrors could deter from doing his duty, and whom no influence could swerve one hair's breadth from the strict line of duty. There are many other honorable names of a similar character among the solicitors of England; among whom Mr. Edwin Field, so often mentioned by Crabbe Robinson in his Diary and Correspondence, is worthy of honorable remembrance, with whom as well as Mr. Jevons we formed a most delightful acquaintance; all of whom the barristers would gladly welcome to their ranks. But the mass of the solicitors in England must be regarded as a somewhat lower grade of men, both in culture and character. By being restricted to a lower grade in the profession, they seem, while losing caste,

to have lost something of that nice and critical self-respect, which proves so indispensable in maintaining a high degree of honor and decorum in any profession or pursuit. And we greatly fear that in combining both orders of the profession in this country, we shall be more in danger of pulling them all down to the lower level than likely to bring them all up to the higher plane of professional honor and purity. There are, no doubt, in the English bar, a very large proportion of members, who have almost no occupation, but who live in chambers at the different inns of court, and subsist in a very small way, upon a narrow income, inherited perhaps; and whom you will never see in court or in society; but who are nevertheless pure-minded, clean-handed men; not a whit inferior in point of character to the ablest men in Westminster Hall or Lincoln's Inn. We have no such men, and never can have, whose very presence is a rebuke to vice, and a defence from crime. Many of our hangers-on, upon the contrary, are a dead weight to drag us downwards. And by hangers-on we mean to embrace many who are nominally in the bar, but have gone into other and more hopeful pursuits on the score of emolument or promotion, and among the number many who have gone into political life, and who subsist upon robbery of one kind or another. From none of our number do we receive more fatal wounds. I. F. R.

RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

EDWARD S. ROBERTS *v.* WILBUR HALL.

A. held the promissory note of the defendant, obtained of him by fraud, and which the defendant had demanded back immediately on discovering the fraud. The note was payable to A.'s order and on time, and before due A. endorsed it to the plaintiff in trust in part for certain creditors and the balance for A.'s wife, the plaintiff having no knowledge of the infirmity of the note. The creditors accepted the transfer and directed the plaintiff to bring suit on the note when due. *Held*, 1. That so far as the trust for A.'s wife was concerned, the plaintiff took the note as agent of A., and therefore with its infirmity. 2. That the entire transaction by which the note was transferred to the plaintiff was out of the regular course of business, and that the note therefore remained open to the defence of fraud.

The wife of A. was living apart from him, but was not divorced. *Held* not to affect the case.

The taking of negotiable paper as payment of or security for a pre-existing debt is not out of the regular course of business.